



May 3, 2013

VIA ELECTRONIC FILING

Chairman Genachowski
Commissioner Clyburn
Commissioner Rosenworcel
Commissioner Pai
Julie Veach, Chief - Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Petition of the United States Telecom Association for Forbearance From Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61

Dear Mr. Chairman, Commissioners, and Ms. Veach:

The US Telecom forbearance petition provides the Commission with a further opportunity to respond to President Obama's directive to eliminate regulations that are “outmoded” and “excessively burdensome,”¹ and to advance Chairman Genachowski’s own objectives in this regard. The Commission has an opportunity to allow price cap incumbent local exchange carriers to begin keeping a single set of financial books and records in accordance with generally accepted accounting principles, just like other commercial entities, and in the same way that their competitors do.² Indeed, GAAP-based accounting better reflects today’s markets and provides more relevant and accurate financial data.

Some of the recent attention in this proceeding has focused on Part 32, the Commission's arcane uniform system of accounting that still applies to price cap

¹ See Exec. Order No. 13,579 § 2, 76 Fed. Reg. 135 (Jul. 14, 2011); FCC New Release, *Statement of Chairman Julius Genachowski on Executive Order on Regulatory Reform and Independent Agencies* (rel. Jul. 11, 2013) (“[d]irecting the FCC staff to prepare a plan to continue identifying outmoded or counterproductive rules”).

² In its petition filed in the above-referenced proceeding, the United States Telecom Association (“USTelecom”) has requested forbearance from: Part 32 on behalf of all price cap regulated carriers (47 U.S.C. § 220(a)(2), 47 C.F.R. §§ 32.1 – 32.9000).

carriers even though none remain subject to cost-based regulation, and many have not been cost regulated in more than 20 years.³ In 2008, the Commission took a partial step towards reducing the burdens of maintaining this intricate system of regulatory accounting in the Cost Assignment Forbearance Order. The appropriateness of that measure has been validated by the fact that, during the five years since the Cost Assignment Forbearance Order, there has been no request for financial information from these records. The Commission should now take the related step of eliminating the mandate that price cap carriers bear the considerable costs of maintaining duplicative, purely regulatory, books of accounts for the Commission. As shown in the petition, there is no “current federal need” for these rules.

To address Commission concerns with forbearance from these rules, USTelecom members have already made voluntary commitments. Members committed to file the same pole attachment cost report (using Generally Accepted Accounting Principles (GAAP) or a successor accounting standard) that they do today and to continue to record or track transactions subject to Section 272(e)(3) in a reasonable, auditable way.⁴ Nonetheless, during a May 2 meeting among Jon Banks and Glenn Reynolds from USTelecom; Maggie McCready, Ian Dillner, and Sandy Anderson from Verizon; Linda Vandeloop and Allen Monroe with AT&T, and Julie Veach, Deena Shetler, and David Zesiger from the Wireline Competition Bureau, concerns were raised that additional protections might be necessary to ensure a smooth transition if forbearance relief were granted. For reasons we have previously stated, we strongly disagree that any additional actions are necessary to justify removal of these arcane and burdensome requirements.

Nonetheless, our member companies seeking forbearance are willing to go further to eliminate any lingering concerns of whether forbearance is appropriate and indeed in the public interest. To that end, we would propose two additional safeguards that could be conditions for obtaining Part 32 forbearance.⁵ First, with respect to section 224 pole attachment agreements, any company wishing to avail itself of Part 32 forbearance would commit not to increase overall cost inputs⁶ to the

³ See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), *aff'd*, *Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

⁴ See *Ex Parte* Letter from Bennett Ross, Wiley Rein, LLP, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-61 (filed Apr. 18, 2013) at 6.

⁵ Individual carriers would have the option of making commitments consistent with these conditions or foregoing this particular aspect of forbearance relief.

⁶ For example, the FCC pole attachment rate formulae rely on accounting cost inputs used to determine the annual carrying charges attributable to the cost of owning a pole. The FCC rate formulae also, however, include factors that are not based on accounting inputs and would not be

FCC pole attachment rate formulae by more than the rate of inflation (as measured by the Consumer Price Index or CPI) for the following three years, except to the extent that such increases are justified by causes other than moving from Part 32 rules to GAAP accounting as demonstrated by appropriate documentation.⁷ These rates would continue to be based on the same cost report filed annually with the Commission, would have to be reasonable, and could decline under appropriate circumstances.

Second, with respect to forbearance from Part 32 generally, any company availing itself of Part 32 forbearance would, for the next five calendar years, retain the ability to provide financial data depicting existing Part 32 account structures by mapping or deriving such account structures from their GAAP (or successor) financial records. Data covering the two calendar years immediately preceding a request by the Commission would be made available.

The mechanics of each of these undertakings are explained further below. We trust that these will resolve any remaining concerns with Part 32 forbearance and certain other requested relief in USTelecom's petition.

Additionally, price cap carriers will continue to work with state commissions to provide needed financial information. As the Commission observed in the *AT&T Cost Assignment Forbearance Order*, states will continue to have authority over state accounting rules under state law.⁸ Companies will continue to take seriously their obligations to state commissions regarding the types of financial information contained in Part 32 accounts. For example, in its reply comments in this proceeding, AT&T states:

(Continued . . .)

impacted by any accounting changes between Part 32 and GAAP, such as the pole height or space occupied. See 47 C.F. R. § 1.1409. Pole attachment rates set by state commissions also would remain unaffected, except to the extent a state makes changes to its rates following Commission action here.

⁷ The order should clarify that this condition would expire for all carriers at the end of three years. In other words, after that time, individual carriers would have the ability to take advantage of the Part 32 forbearance without this condition.

⁸ *Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302, ¶¶ 20 (2008) ("AT&T Cost Assignment Forbearance Order"), *pet. for recon. pending, pet. for review pending*, NASUCA v. FCC, Case No. 08-1226 (D.C. Cir., filed June 23, 2008);

In line with the comments of the Vermont Public Service Board (at 1-3), AT&T will continue to work with states (and the Commission) when they need particular information. As the Commission recognized in the AT&T Cost Assignment Order, '[w]hen a need exists for jurisdictional information for monitoring or other purposes, AT&T can develop such information to meet those state-specific requirements.' Indeed, since that order, AT&T has fully cooperated with the handful of state commissions that have requested information and has been able to fulfill their regulatory needs.⁹

1. Deriving Part 32 Account Data Commitment

Under the proposal, price cap carriers would maintain their financial records in accordance with GAAP (or its successor), rather than Part 32 accounting rules. Using account to account mappings and other financial records to derive Part 32 account structure, carriers will be able, upon request, to report information requested by the Commission using the former Part 32 account structure, thus enabling consistency in presentation between companies. The valuation of assets, liabilities, revenues and expenses will be in accordance with GAAP (or its successor). Currently, there are only a few areas that give rise to significant Part 32/GAAP differences. These deal primarily: with (1) depreciable lives; (2) accounting for retirement of equipment and other facilities, including obsolescence, cost of removal and salvage; (3) capitalization limits and (4) the tax effects of these differences.

Use of GAAP in these instances follows corporate "best practices" and more accurately reflects current technology, business conditions and economics. Carriers' GAAP amounts are subject to audit annually, are subject to Sarbanes-Oxley controls, and SEC oversight. Carriers' SEC filings disclose their accounting policies and other key details regarding implementation of GAAP accounting rules. The goal of GAAP accounting is to ensure that investors are not misled by portraying an unrealistic expectation of companies' financial condition. GAAP accounting is the accounting standard that applies to nearly every public and private company in the United States of America.

By contrast, Part 32 accounting data are based on depreciation rates that have not been reviewed in more than 10 years, contain obsolete and underutilized investment, are not audited, and do not reflect current technology or business market conditions. Whatever their past utility, the Part 32 requirements are simply unnecessary to ensure that price cap carriers charge just, reasonable, and

⁹ AT&T Reply Comments, *Petition of the United States Telecom Association for Forbearance From Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61 at 23.

nondiscriminatory rates because Part 32 has no bearing on the rates charged by price cap carriers. As the Commission recognized in 2008 when granting the BOCs forbearance from the Cost Assignment Rules, by “sever[ing] the direct link between regulated costs and prices,” price cap regulation reduces a carrier’s incentive “to shift non-regulated costs to regulated services”; to the extent such incentives remain, moreover, continued regulation of a price cap carrier’s rates will adequately “protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classification and regulations.” AT&T Cost Assignment Forbearance Order, ¶¶ 17-18 (citations omitted). The same is true for Part 32. Granting this limited relief would allow the Commission to obtain data on a consistent basis between companies and periods while at the same time improving the relevance and quality of the data received.

2. Pole Attachments Rates Commitment

Under the proposal carriers would continue to file the existing Pole and Conduit Rental Calculation Information report by either maintaining the current account structure using GAAP or by tracking or mapping the relevant data to the Part 32 account structure. In addition, with respect to section 224 pole attachment agreements, any company availing itself of Part 32 forbearance would commit not to increase overall cost inputs¹⁰ to the FCC pole attachment rate formulae by more than the rate of inflation (as measured by the Consumer Price Index or CPI) for the next three years, except to the extent that such increases are justified and documented by causes other than moving from Part 32 rules to GAAP accounting. If challenged, the Commission would still look to the same cost report that carriers will file annually with the Commission to ensure that pole attachment rates are reasonable, and these rates could still decline under appropriate circumstances.

¹⁰ For example, the FCC pole attachment rate formulae rely on accounting cost inputs used to determine the annual carrying charges attributable to the cost of owning a pole. The FCC rate formulae also, however, include factors that are not based on inputs impacted by any accounting changes between Part 32 and GAAP, such as the pole height or space occupied. See 47 C.F.R. § 1.1409. Pole attachment rates set by state commissions also would remain unaffected, except to the extent a state makes changes to its rates following Commission action here.

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Sincerely yours,

A handwritten signature in black ink, reading "Walter R. McCormick, Jr." in a cursive script.

Walter McCormick

cc: Michael Steffen
Sean Lev
Rebekah Goodheart
Priscilla Hill Argeris
Nick Degani
Lisa Gelb
Deena Shetler
Bill Dever
Jennifer Prime
Claude Aiken
Diane Griffin Holland
Douglas Klein
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